



CITY OF MILPITAS

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May 31, 2005

Stephen M. Haase, AICP
Department of Planning, Building & Code Enforcement
City of San Jose
801 North First Street, Room 400
San Jose, CA 95110

RE: First Amendment to the Draft Program Environmental Impact Report – North San Jose
Development Policies Update

Dear Mr. Haase:

This letter provides San Jose with the City of Milpitas' additional comments on the First Amendment to the Draft Program Environmental Impact Report (DEIR) for the proposed update to the North San Jose Development Policies. Milpitas staff and legal counsel have reviewed the responses to Milpitas' previous comments set forth in the April 20, 2005 comment letter on the Draft EIR. While most of the responses provided were adequate, the document does not provide an adequate response to two City comments related to traffic and wastewater impacts. The failure to adequately address these concerns raises significant concerns regarding the adequacy of this EIR.(CEQA Guidelines section 15151.)

The following are the two remaining concerns that the City of Milpitas has with the document:

- 1. Cumulative Impacts to Wastewater Treatment Facilities:** We recognize and acknowledge the response that new businesses re-occupying existing vacant buildings in the project area will likely be lower volume water users, and that proposed controls such as the plan to aggressively apply industrial water conservation to reduce sewage generation factors, and ultimately, to stop approving new connections should levels of sewage volume approach existing allocated limits will to some unknown extent mitigate this project's impact. However, the basic cumulative wastewater impact concern still exists as described herein. As we stated in our comment letter, the DEIR identifies San Jose's 2004 WPCP flow as approximately 73 mgd. Based on San Jose's capacity allocation of 106 mgd, this results in a remaining capacity of approximately 33 mgd. The cumulative net increase in sewage discharge for the North San Jose Development is identified as approximately 21 mgd, resulting in 12 mgd remaining to accommodate re-occupancy of vacant buildings and planned growth in other areas of the city.

We are concerned that re-occupancy of vacant buildings to 1998 levels by itself could result in a 21 mgd increase of wastewater flow, considerably higher than the available 12 mgd. Implementing the proposed controls would require an aggressive 43% reduction from historical wastewater flows. In addition, planned and potential growth in other areas of the

city would require additional wastewater flow capacity and could potentially result in the City of San Jose exceeding their allocated wastewater capacity. Therefore, it is still unclear how exceeding the WPCP allocated capacity can be avoided. Given this and the planned growth of other sanitary agencies discharging to the WPCP, an evaluation to assess the need for plant expansion needs to be completed within five years of the certification date of the North San Jose Development Policies Update Final Environmental Impact Report and should be included as part of the project's mitigation measures.

2. **Traffic Impacts:** The document acknowledges that there will be impacts to City of Milpitas east-west roadway corridors. The Draft EIR and Final EIR documents significant impacts to the Calaveras Boulevard/State Route 237, Tasman Drive-Great Mall Parkway, and Montague Expressway corridors. In addition, several mitigation measures are identified to mitigate the significant traffic impacts. Specifically, mitigation measures are identified along Calaveras Boulevard/State Route 237 and at the Montague Expressway/Great Mall Parkway-Capitol Avenue intersection. Unfortunately, the EIR appears to conclude that there are no legally feasible mitigation measures that would mitigate these impacts, and therefore, the EIR declines to require mitigation measures for these impacts.

The attached tables indicate a substantial impact to the three-east/west corridors in Milpitas. The project will add 2,200 and 3,500 vehicle trips through Milpitas during the AM and PM peak hours, respectively, which represents a 19.5% (AM Peak hour) and 27.5 % (PM peak hour) increase in the east/west corridors over existing traffic volumes. All three east/west corridors are projected to operate at unacceptable levels of service under year 2030 conditions.

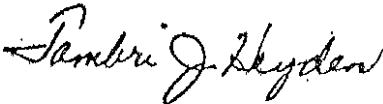
The City disagrees with San Jose's position that mitigating these impacts is legally infeasible. An EIR must describe feasible mitigation measures that could minimize significant adverse impacts (CEQA Guidelines section 15126(a).) A lead agency may avoid identifying a mitigation measure where the measure cannot be legally imposed. "Feasible" is defined as capable of being accomplished in a reasonable time, considering various matters, including legal factors. The EIR discusses various intersection and roadway improvements as possible mitigation for these impacts, but dismisses them as not being legally feasible because these improvements are not within San Jose's jurisdiction. The comment letter submitted by County of Santa Clara County Counsel's office specifically comments that it is legally feasible for San Jose to impose mitigation impact fees on development in the North San Jose area to mitigate traffic impacts outside San Jose's jurisdiction (FEIR, p. 57). Milpitas agrees with this comment. The Mitigation Fee Act (Government Code section 66000 et seq.) does not preclude San Jose from imposing a traffic impact fee that will go toward improvements outside the City. There does not appear to be any technical reasons why San Jose could not make the required legal findings for imposing such a fee. A mitigation fee is a common method for mitigating traffic impacts, particularly, where the development may have only a relatively small responsibility for a cumulative traffic impact (see; *Save Our Peninsula Comm. v. Monterey County Board of Supervisors* (2001) 87 Cal. App. 4th 99, 130; CEQA Guidelines section 15130(c).)

Therefore, the City of Milpitas is requesting that improvements in our east/west corridors be included in San Jose's Traffic Impact Fee Program to mitigate significant impacts to the three corridors. This addition to San Jose's traffic impact fee program is imperative to provide a mechanism to address the impacts by funding necessary mitigation and ensuring completion of the mitigations since Milpitas is not legally required to be notified of future development approvals within the project area. These impacts should not be taken lightly as the Calaveras Boulevard/State Route 237 widening from I-880 to Milpitas Boulevard is included in the VTP 2030 Local Streets and County Roads Element as the number one priority in Santa Clara County. The Montague Expressway/Great Mall Parkway-Capitol Avenue Urban Interchange is the number 13 on the priority list. The Montague Expressway 8 lane widening project is also contained in the VTP 2030 and is listed as a Tier 1 Project in the Santa Clara County Comprehensive Countywide Expressway Study adopted in 2004.

Milpitas is willing to provide San Jose with reasonable assurances that the City will proceed to construct improvements addressing the traffic impacts identified in the EIR as part of a larger program to address traffic impacts to these three corridors once sufficient funding has been identified.

If you have any questions, please contact me at 408-586-3280. City staff will be attending the Planning Commission and City Council hearings on this project to voice our issues.

Sincerely,



Tambri Heyden, AICP
Acting Planning & Neighborhood Services Director

cc: File
Charlie Lawson, Acting City Manager
Greg Armendariz, City Engineer
Patrick Whitnell, Assistant City Attorney



CITY OF MILPITAS

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April 20, 2005

Andrew Crabtree
Department of Planning, Building, & Code Enforcement
City of San Jose
801 North First Street, Room 400
San Jose, CA 110

Re: Draft Environmental Impact Report -- North San Jose Development Policies Update

Dear Mr. Crabtree,

Thank you for this opportunity to comment on the Draft Environmental Impact Report (DEIR) for the proposed update to the North San Jose Development Policies. The South Bay Area has had been among the hardest hit regions from the down-turn in the economy and we can appreciate San Jose's efforts to revise the North San Jose development policies to make the Rincon area more attractive to new businesses. The City of Milpitas is undertaking a similar intensification project for the properties in the vicinity of the Montague BART station.

Though Milpitas is supportive of your efforts we do have the following comments on the Draft EIR that are organized into three major areas of concern.

1. Cumulative Impacts to Wastewater Treatment Facilities

The conclusion reached in the EIR that the project would not have any cumulative impacts to the capacity at the Water Pollution Control Plan (WPCP) is based on the premise that the existing flow (excluding planned growth) from San Jose of 73 million gallons per day (mgd) does not increase. San Jose's sewer flow to the WPCP in 1998 was 94 mgd. The 21 mgd decrease in sewer flow from 1998 to 2004 is attributed in part to the economic conditions that have resulted in high vacancy rates in the industrial areas of Santa Clara County. The EIR concludes that if discharge levels return to those that occurred in 2000, due to the re-occupancy of currently vacant buildings, there would be insufficient capacity at the WPCP to treat the additional volume of wastewater. The EIR attempts to address this fact by citing to San Jose policies that preclude approval of new development if the City Manager makes a determination that the cumulative sewage treatment demand will cause the total sewage treatment demand to meet or exceed capacity. This analysis neglects to consider that existing vacant buildings may not need any new land use approvals. Therefore, it is unclear how the San Jose can control discharges from these properties, and if San Jose cannot control these discharges, how San Jose can determine whether a new project will result in the treatment plant's capacity being exceeded. Thus, there is clearly not enough sewer capacity at the WPCP to accommodate the flow rate of San Jose's existing building stock, the planned

growth in other portions of the city, and the expected additional flow resulting from the proposed North San Jose Development Policies. Further, as the EIR discusses, the treatment plant's ability to discharge into the Bay is limited by state agencies. Therefore, any increase in treatment capacity must either be accompanied by an increase in Bay discharge limit, or by a project to divert treat water to other uses. The EIR does not acknowledge that further study is needed to determine how feasible additional diversion will be.

2. Odor Impacts

Though the EIR makes reference to potential impacts from odors originating from the WPCP, there is no analysis or conclusion of the significance of these impacts nor is there any mention of the Newby Island Compost facility. As you may be aware, in 1997 the City of San Jose filed a lawsuit against the City of Milpitas challenging the approval of the McCarthy Ranch Mixed Use project that would have allowed residential uses west of I-880. The primary purpose of the suit was to remove the possibility of additional odor complaints, from the planned residential community, that could have required the WPCP to make physical changes to their operations to reduce odors. The lawsuit ended in a settle agreement whereby the land use designation on Mr. McCarthy's property was changed from Mixed Use to Industrial Park and restricted future uses to non-residential uses only. Given the additional 56,000 people expected in the Rincon area, the lack of a thorough analysis of the impacts of odors from the WPCP and Newby Island is significant and needs further study.

3. Traffic Impacts

Only nine intersections were studied in Milpitas and the EIR concluded that four of the nine intersections would be significantly impacted by the project: I-880 Northbound Ramps/Great Mall Parkway, SR-237(Calaveras Boulevard)/Milpitas Boulevard, Montague Expressway/Great Mall Parkway, and McCarthy Boulevard/Tasman Drive.

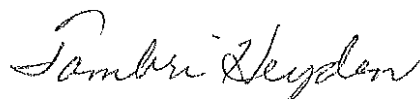
- Great Mall Parkway/Abel Street intersection operated at LOS D based on Year 1999 and 2000 traffic counts. Per the intersection selection criteria, this intersection should have been analyzed since it operated at LOS D or worse and the project is expected to add a significant amount of traffic to it.
- The technical analysis did not include trips from approved projects at any of the Milpitas study intersections, while approved trips were included for all San Jose and Santa Clara intersections. The City of Milpitas forwarded the approved projected trips to be included under Background Conditions. As a consequence of adding the approved trips, the project will impact seven of the nine study intersections in Milpitas instead of just four locations cited above. The three new impacted intersections are the Calaveras Boulevard/Abel Street, the I-880 Southbound Ramps/Tasman Drive, and the Montague Expressway/South Milpitas Boulevard.
- The project trips added to roadway corridors in the City of Milpitas are inconsistent and do not always balance between adjacent intersections. For example, from Appendix A – Volume Summary Tables, the project is expected to add 132 vehicles during the AM peak hour to the westbound through movement of the Great Mall Parkway/Main Street intersection; however, only one (1) additional vehicle is projected on the westbound approach at the Great Mall Parkway/I-880 Northbound Ramps intersection. Some discrepancies are expected because of the assignment methodology using existing turning movement counts; however, this inconsistency makes it difficult to accurately determine the impacts to each study corridor.

- The DEIR shows that the project would cause traffic volumes on the westbound approach at the Calaveras Boulevard/Abel Street intersection to *decrease* by approximately 250 vehicles during the AM peak period. This projection is not logical based on the size of the proposed development and the fact that the trips were assigned manually as opposed to using the model (which would likely show decreases on some roadways due to changes in land use, etc.).
- The document does not include a description of the fee program designed to fund the relatively long list of mitigation measures. We have heard that the fee program does not include funding for any mitigation measures outside the City of San Jose.
- While the DEIR analysis and the corresponding TIA did not provide traffic volumes at the corridor level, the projected intersection turning movement volumes were reviewed to determine the potential impact to each roadway segment. The impact is calculated as the increase in volume over existing conditions since background volumes were not estimated for any City of Milpitas intersections.

<p align="center">TABLE 1 PROJECT TRIPS ADDED TO KEY MILPITAS CORRIDORS IN CITY OF MILPITAS</p>						
Corridors	Two-way Volumes					
	AM Peak Hour			PM Peak Hour		
	Existing Volumes	Added Volumes	Percent Inc (%)	Existing Volumes	Added Volumes	Percent Inc (%)
Calaveras (SR 237)	3,325	128	3.8%	4,429	282	6.4%
Great Mall Parkway	2,477	464	18.7%	2,445	1,103	45.1%
Montague Expressway	4,396	1,603	36.5%	4,552	2,124	46.7%
Total East-West Corridor	10,198	2195	21.5%	11,426	3,509	30.7%
Source: North San Jose Development Policies Draft EIR Appendices (David J. Powers & Associates, March 2005)						

We would like the opportunity to discuss these issues with you further and would like to meet no later than May 6, 2005. These issues are very significant to the City of Milpitas and could result in a recirculation of the EIR if they are not adequately addressed. The Milpitas City Council reviewed and approved these comments at their meeting of April 19, 2005. Please contact Veronica Rodriguez at 586-3271 to schedule our meeting.

Sincerely,



Tambri Heyden
 Acting Planning & Neighborhood Services Director